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January 11, 1996*

DOCKET FILE COPY ORIGINAL

William F. Caton, Acting Secretary
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Washington, D.C. 20554

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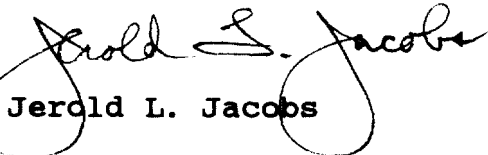
Re: MM Docket No. 92-214
FM Table of Allotments
Columbia, Bourbon, Leasburg,
Gerald, Dixon and Cuba, MO

Dear Mr. Caton:

Enclosed herewith for filing, on behalf of our client, Lake Broadcasting, Inc., are an original and four (4) copies of its "PETITION FOR RECONSIDERATION" in the above-referenced matter.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

* This pleading was prepared for filing on January 4, 1996. Today (January 11, 1996) is the first day that the FCC has been open to receive filings since December 15, 1995.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

JAN 11 1996

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 92-214
Table of Allotments,)	
FM Broadcast Stations)	RM-8062, RM-8144,
(Columbia, Bourbon, Leasburg,)	RM-8145, RM-8146,
Gerald, Dixon, and Cuba, Missouri))	RM-8147

TO: Chief, Allocations Branch
 Mass Media Bureau

PETITION FOR RECONSIDERATION

LAKE BROADCASTING, INC. ("Lake"), licensee of Station KBMX(FM), Eldon, Missouri, permittee of Station KFXX(FM), Cuba, Missouri, and an applicant for a new FM broadcast station on Channel 244A at Bourbon, Missouri (File No. BPH-921112MH), by its attorneys, pursuant to §1.429 of the Commission's Rules, hereby petitions for reconsideration of the Report and Order ("R&O"), DA 95-2250, 60 Fed. Reg. 62219 (December 5, 1995), in this proceeding. In support whereof, Lake shows the following:

1. Originally, there were five parties to this proceeding, but Jeff Weinhaus and Tony Knipp withdrew their rulemaking counterproposals. Zimmer Radio of Mid-Missouri, Inc. ("Zimmer"), licensee of Station KCMQ(FM), Columbia, Missouri -- through its predecessor, The Greenfield Group -- filed the original petition for rulemaking, which requested that KCMQ's facilities be upgraded from Channel 244C3 to Channel 244C1 and that Zimmer's construction permit be modified accordingly. Lake counterproposed the substitution of Channel 297C3 for Channel 271A at Cuba and the retention of Channel 244A in Bourbon. Central Missouri Broadcasting, Inc. ("Central Missouri") also filed a counterproposal, seeking a first local

broadcast service allotment at Dixon, Missouri. The subject R&O: (1) granted Zimmer's request that KCMQ's facilities be upgraded to Channel 244C1; (2) substituted Channel 231A for Channel 244A at Bourbon, Missouri, and gave Lake cut-off protection and an opportunity to amend its pending new-station application to specify operation on that frequency; (3) allotted Channel 297C3 to Cuba and made the channel available for application, instead of substituting Channel 297C3 for Channel 271A at Cuba and modifying Lake's construction permit accordingly; and (4) allotted Channel 221A to Dixon. In this Petition, Lakes challenges only the R&O's Cuba and Dixon allotment decisions. As Lake will now show, the R&O erred by allotting Channel 297C3 as a second FM frequency in Cuba (instead of substituting Channel 297C3 for Channel 271A) and by allotting Channel 221A at Dixon (instead of holding that proposal in abeyance pending the outcome of the related FM rulemaking proceeding in MM Docket No. 89-120 (FM Table of Allotments (Northweye, Cuba, Waynesville, Lake Ozark, and Eldon MO) ("Docket 89-120"), 7 FCC Rcd 1449 (Mass Media Bur. 1992)).

I. Channel 297C3 Should Be Substituted For Channel 271A In Cuba

2. In the Cuba allotment, the R&O concluded (at ¶7) that it was not possible to substitute Channel 297C3 for Channel 271A because (a) Zimmer had previously expressed an interest in the Cuba upgrade frequency (see Footnote 5 of Zimmer's January 13, 1993 counterproposal reply comments) and (b) a Commission staff analysis was unable to find an additional equivalent channel for allotment at Cuba. Therefore, the R&O allotted Channel 297C3 to Cuba as a second FM broadcast service and announced a January 9 - February 9, 1996 filing window. Id.

3. Lake objects to the R&O's conclusion in Paragraph 7 that it was necessary to allot a second frequency at Cuba, instead of simply modifying Lake's KFXE construction permit to specify Channel 297C3, because the R&O mistakenly concluded that Zimmer's previous expression of interest in applying for a Cuba station was still viable. In reality, as stated in Zimmer's September 28, 1995 "Supplemental Comments" in this proceeding (at 5, 6, and 7), Zimmer dropped its interest in Cuba in September 1995 -- two months before the R&O was released -- and fully intended its September 28, 1995 pleading to be construed as an abandonment of its Cuba expression of interest. This abandonment is clearly evidenced in the Supplemental Comments (at 6), where Zimmer calls upon the Commission to "upgrade KFXE's assignment at Cuba to Channel 297C3". (Similar language is found at pages 5 and 7 of the Supplemental Comments.) Since such an upgrade of Station KFXE could not be accomplished unless Zimmer abandoned its expression of interest, Zimmer clearly meant to signify its abandonment of interest in a Cuba station by the language it used in its Supplemental Comments.

4. Under the circumstances, and in view of the R&O's error in not taking account of this timely abandonment of Zimmer's expression of interest in Cuba, Lake urges that the R&O should be reconsidered to: (1) delete Channel 271A from the FM Table of Allotments and modify Lake's construction permit to specify operation on Channel 297C3, pursuant to §1.420(g) of the Rules, since there are no outstanding expressions of interest in that channel; and (2) cancel the January 9-February 9, 1996 filing window for Cuba. See FM Table of Allotments (Jacksonville NC et al.) ("Jacksonville"), DA 95-2335, released December 8, 1995 (reconsideration granted to delete channel from FM Table of Allotments where expression of interest was timely withdrawn). Lake further urges the Commission to grant expedited action on the subject Petition

in order to prevent any applicants from wastefully filing a new-station application for Channel 297C3. Cf. Jacksonville, supra, in which the Commission did not act upon a stay motion before a filing window opened and then had to dismiss the applications filed in that window when the channel was deleted.

5. As a second ground for reconsideration of the R&O's refusal to delete Channel 271A at Cuba, in the event that the Commission declines to recognize Zimmer's timely abandonment of its expression of interest in a Cuba allotment, Lake urges that the R&O also erred by improperly attempting to sever mutual exclusivity between this proceeding and Docket 89-120. Specifically, Footnote 12 of the R&O explains that the specified coordinates for Channel 297C3 at Cuba conflict with Lake's proposal in Docket 89-120 to upgrade its Eldon Station KBMX to Channel 270C1, because the Cuba upgrade is not possible unless Channel 297A is substituted for Channel 271A at Cuba, which cannot occur if Channel 297C3 is allotted as a second FM station in Cuba. The footnote then erroneously states that the Channel 297C3 allotment in this proceeding can occur, despite the apparent conflict, because "Lake Broadcasting has stated in its reconsideration petition [in Docket 89-120] that it would also be willing to accept a Class C2 upgrade at Eldon, which does not require a related channel substitution at Cuba...." Lake will now demonstrate that the R&O's logic is fatally flawed and that the mutual exclusivity with Docket 89-120, caused by retaining Channel 271A at Cuba (and also by allotting Channel 221A to Dixon -- see Section II below) cannot be resolved in the manner proposed in the R&O.

6. In its January 5, 1993 "Supplement to Petition for Reconsideration" in Docket 89-120, Lake stated (at 2)(emphasis in original):

[I]f the Commission is unwilling to...upgrade Lake's Station KBMX(FM) to Class C1, Lake is willing to accept an immediate Class C2 upgrade at its present transmitter site in the Eldon proceeding.

Lake made it abundantly clear in the text surrounding that quotation that it was attempting to fashion an immediate "global solution" in Docket 89-120, having filed a Petition for Reconsideration therein on March 23, 1992. Therefore, Lake maintains that the R&O erred by attempting to make use of Lake's Class C2 compromise proposal three years after it was proffered! Obviously, Lake's offer lapsed by its own terms long ago, and the R&O cannot properly revive it at this late date. Lest there be any doubt, Lake hereby expressly withdraws its January 5, 1993 Class C2 upgrade offer. Moreover, Lake's offer called for grant of an immediate Class C2 upgrade to Lake's KBMX, but the R&O makes no grant at all to Lake; it only holds out the possibility that a Class C2 upgrade may some day be granted to KBMX in Docket 89-120 (a rulemaking proceeding being held in abeyance pending the outcome of a Lake-related revocation proceeding in MM Docket No. 95-154). Lake submits that, under these circumstances, the R&O's attempted use of Lake's compromise proposal in this belated and halfway manner in this proceeding violates the letter and spirit of the offer and Lake's administrative due process rights.

7. Finally, sound public policy reasons also support the rejection of the R&O's effort to use Lake's stale KBMX Class C2 proposal to sever mutual exclusivity with Docket 89-120. Attached hereto as Exhibit A is a two-page comparison of the 60 dBu contours and related "areas and populations" for KBMX at its present Channel 270A facilities at Eldon, at Channel 270C2, and at Channel 270C1, prepared by Jack S. Sellmeyer of Sellmeyer Engineering in December 1995. The data are summarized as follows:

<u>Facilities</u>	<u>60 dBu Area by Sectoring</u>	<u>60 dBu Area from Census</u>	<u>60 dBu Population</u>
Ch. 270A	2,508 sq. km.	2,332 sq. km.	39,446
Ch. 270C2	5,214 sq. km.	5,027 sq. km.	67,275
Ch. 270C1	16,389 sq. km.	15,565 sq. km.	269,040

It is well established that the cardinal principle in FM allotment decisions -- drawn from Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §307(b) -- is to "provide a fair, efficient, and equitable distribution of radio service". Mr. Sellmeyer's study makes it abundantly clear that the "areas and populations" differences between upgrading KBMX to Channel 270C2 or to Channel 270C1 are so dramatic -- a 300% difference in area and a 400% difference in population -- that foreclosing Lake from upgrading to Channel 270C1, based on a stale compromise proposal, would be unfair, inefficient, and inequitable as a matter of law. Yet, allotting Channel 297C3 to Cuba without deleting Channel 271A would have that foreclosing effect. In sum, Lake submits that administrative due process and established allotment principles require that the allotment of Channel 297C3 to Cuba should be held in abeyance pending the outcome of Docket 89-120, unless the Commission concludes, as Lake urges, that Channel 297C3 should be substituted for Channel 271A at Cuba in this proceeding.

II. The Dixon Allotment Should Be Held In Abeyance

8. Lake urges that the R&O's allotment of Channel 221A at Dixon at the present time has the same administrative due process and public policy infirmities as the R&O's failure to substitute Channel 297C3 for Channel 271A at Cuba (discussed in Section I above). As explained in Footnote 11 of the R&O, the allotment of Channel 221A to Dixon conflicts with Lake's proposal in Docket 89-120 to allot that channel to Waynesville, Missouri. While allotting

Channel 270C2 to Lake at Eldon, instead of Channel 270C1, would not require allotting Channel 221A to Waynesville (in lieu of Waynesville's present Channel 272A), the allotment of Channel 221A to Dixon forecloses the possibility of allotting Channel 270C1 to Lake at Eldon. In other words, allotting Channel 221A to Dixon permanently prejudices the outcome of Docket 89-120 by precluding the allotment of Channel 270C1 to Lake at Eldon.

9. As stated in Footnote 11 of the R&O, the only ground for ignoring the conflict caused by allotting Channel 221A to Dixon while there is an outstanding proposal to allot the same channel to Waynesville is the R&O's mistaken view that Lake's January 5, 1993 "immediate Class C2 upgrade" proposal for Docket 89-120 can be foisted upon Lake three years later by the Commission's actions in this proceeding. As further discussed in Section I above, there is no legal or public interest justification for taking any actions in this proceeding which will predetermine the outcome of Docket 89-120 in a manner that will be permanently detrimental to Lake's aspirations to obtain a Class C1 upgrade for KBMX at Eldon. In sum, the Dixon allotment violates Lake's administrative due process rights and should be held in abeyance, pending the outcome of the proposed allotment of Channel 221A to Waynesville in Docket 89-120.

III. Conclusion


10. Lake notes that Footnotes 11 and 12 of the R&O state that the processing of applications in the Dixon and Cuba filing windows "may be deferred pending the outcome of MM Docket 89-120". However, Lake urges that this cautionary language concerning application processing does not repair the due process and public interest damage done by the allotment

errors which Lake is challenging in this rulemaking proceeding. Once the allotments in this proceeding become final, they will not be able to be undone by Docket 89-120. To the contrary, what happens in this proceeding, if Channel 297C3 is not substituted for Channel 271A at Cuba and if Channel 221A is allotted to Dixon, will limit the Commission's allotment options in Docket 89-120 to Lake's detriment. Under these circumstances, Lake is obliged to challenge at this time the R&O's Cuba and Dixon allotments to the extent that they are legally erroneous, deny Lake's administrative due process rights, and violate the paramount public interest in fair, efficient, and equitable channel allotments.

WHEREFORE, in light of the foregoing, the Commission should grant reconsideration of the R&O.

Respectfully submitted,

LAKE BROADCASTING, INC.

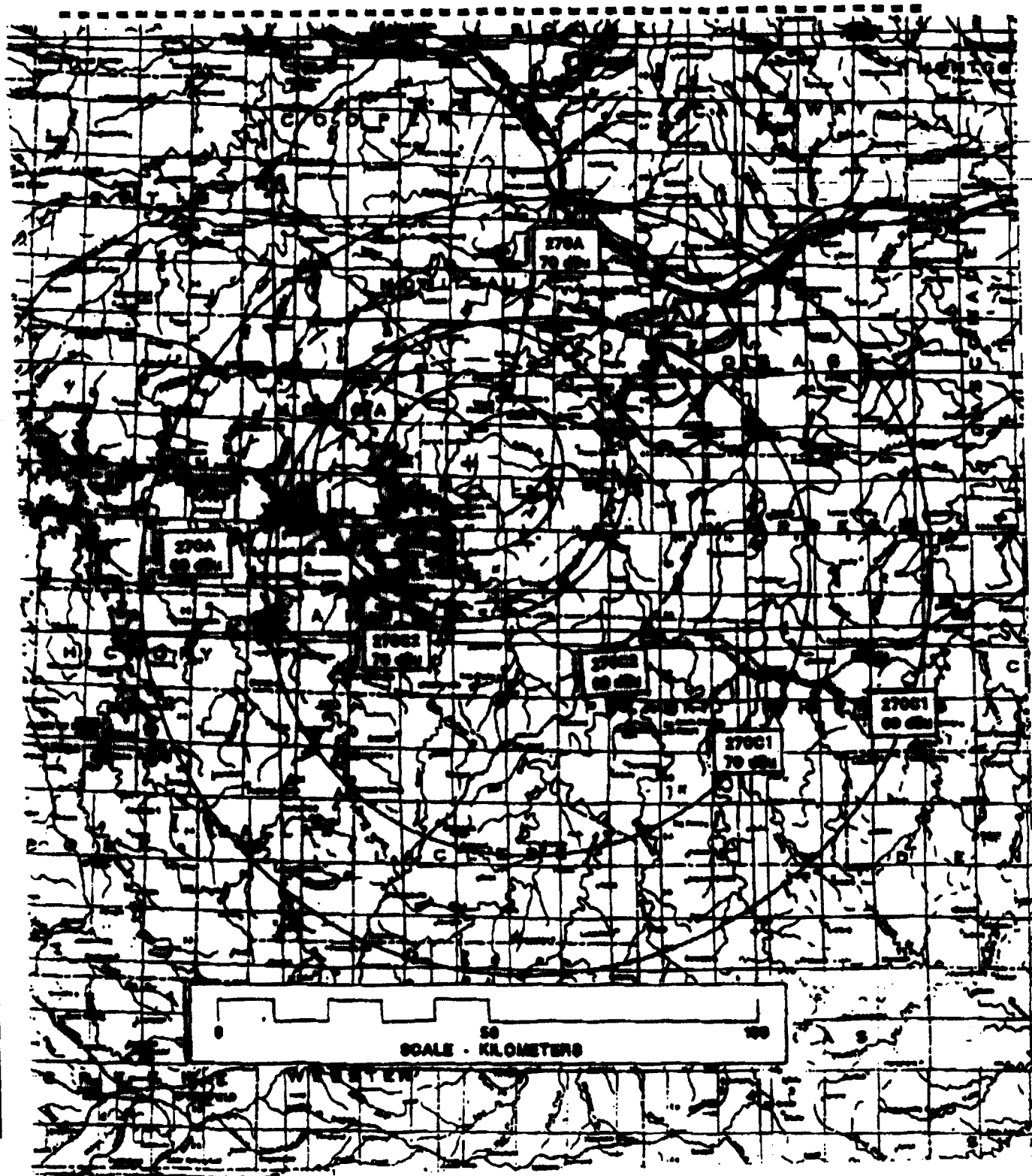
By 
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Dated: January 4, 1996

**COMPARISON OF COVERAGE CONTOURS
RADIO STATION KBMX
ELDON, MISSOURI
DECEMBER, 1995**



SELLMEYER ENGINEERING
BROADCAST AND COMMUNICATIONS CONSULTING ENGINEERS
P. O. Box 888 McKinney, Texas 75069
MEMBER AFOOE
(214) 542-2058

COMPARISON OF POPULATION WITHIN 1.0 MV/M CONTOURS

KBNX EXISTING FACILITY:

Source Coordinates: 38-16-49 North 92-35-07 West

This program uses the 1990 US Census Database: PL 94-171.
Distance to the Contours are interpolated between Azimuths.
Centroid Coordinates within the Contour are counted as total.
CONTOUR OF STUDY is 60 dBu.

AZM:	0	45	90	135	180	225	270	315
DIST:	25.6km	26.8km	29.7km	29.4km	29.0km	30.3km	28.6km	26.3km
MO, Camden County	Population :	12,710			Households:			15,832
MO, Cole County	Population :	2,317			Households:			949
MO, Miller County	Population :	16,980			Households:			8,127
MO, Moniteau County	Population :	785			Households:			342
MO, Morgan County	Population :	6,654			Households:			7,505
SUMMARY:	Population :	39,446			Households:			32,755
Area within Contour by Sectoring:		2,508 sq. km						
Land Area in Contour from Census:		2,332 sq. km						

KBNX CLASS C2 FACILITY AS PROPOSED:

Source Coordinates: 38-16-49 North 92-35-07 West

AZM:	0	45	90	135	180	225	270	315
DIST:	32.6km	37.1km	44.4km	43.9km	43.0km	45.8km	41.7km	35.5km
MO, Camden County	Population	24,689			Households:			24,622
MO, Cole County	Population	6,746			Households:			2,584
MO, Maries County	Population	569			Households:			263
MO, Miller County	Population	19,823			Households:			9,376
MO, Moniteau County	Population	1,698			Households:			663
MO, Morgan County	Population	12,273			Households:			11,148
MO, Osage County	Population	557			Households:			255
MO, Pulaski County	Population	920			Households:			380
SUMMARY:	Population :	67,275			Households:			49,071
Area within Contour by Sectoring:		5,214 sq. km						
Land Area in Contour from Census:		5,027 sq. km						

KBNX CLASS C1 FACILITY AS PROPOSED:

Source Coordinates: 38-04-00 North 92-26-00 West

AZM:	0	45	90	135	180	225	270	315
DIST:	72.8km	73.3km	71.2km	69.6km	70.4km	73.2km	73.7km	73.5km
MO, Benton County	Population :	1,844			Households:			2,295
MO, Boone County	Population :	572			Households:			226
MO, Callaway County	Population :	6,420			Households:			2,320
MO, Camden County	Population :	27,493			Households:			25,662
MO, Cole County	Population :	63,579			Households:			24,939
MO, Dallas County	Population :	5,214			Households:			2,323
MO, Hickory County	Population :	1,803			Households:			1,090
MO, Laclede County	Population :	27,158			Households:			11,564
MO, Maries County	Population :	7,976			Households:			3,715
MO, Miller County	Population :	20,266			Households:			9,587
MO, Moniteau County	Population :	11,025			Households:			4,575
MO, Morgan County	Population :	14,569			Households:			12,212
MO, Osage County	Population :	8,920			Households:			3,804
MO, Phelps County	Population :	29,319			Households:			12,245
MO, Pulaski County	Population :	41,307			Households:			13,838
MO, Texas County	Population :	1,373			Households:			599
SUMMARY:	Population :	269,040			Households:			130,994
Area within Contour by Sectoring:		16,389 sq. km						
Land Area in Contour from Census:		15,565 sq. km						

CERTIFICATE OF SERVICE

I, Yvonne Corbett, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 11th day of January, 1996, I have caused to be mailed, or hand-delivered, a copy of the foregoing "**PETITION FOR RECONSIDERATION**" to the following:

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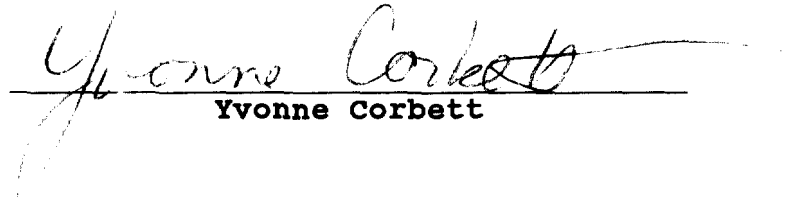
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